



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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AUG 25 2015

U.S. Golden Eagle, LP
c/o John Negrin
510 W. Hastings Street, 2nd Floor
Vancouver, BC V6B 1L8
Canada

Dear Mr. Negrin:

Re: APPROVED Seasonal Change Authorization for Surface Water Certificate 11032A, Ground Water Certificate (GWC) 2677, GWC 1848, and Ground Water Claim 096365, Skagit County, Water Resources Inventory Area 3

On May 11, 2015, the Department of Ecology (Ecology) received your four applications for seasonal change. U.S. Golden Eagle (USGE) published a legal notice for the proposed seasonal changes in the *Skagit Valley Herald* on May 22 and 29, 2015. Ecology received the notarized affidavit of publication on July 1, 2015. No protests were received during the statutory 30-day protest period.

The subject change applications have been assigned control numbers **CS1-*20317AWC**, **CG1-096365CL**, **CG1-*03204CWRIS**, **CG1-*03563CWRIS**. Collectively, these applications seek to change the points of diversion/withdrawal and change the place of use to cover 250 acres of USGE agricultural property different from the 250 acres within the original places of use (POUs). These changes will apply to the remainder of the 2015 irrigation season.

BACKGROUND INFORMATION (Written by Ria Berns, Environmental Specialist)

Surface Water Certificate (SWC) 11032A

SWC 11032A was issued to Richard C. Mailliard with a June 22, 1967, priority date. The Certificate authorizes points of diversion (PODs) from Etach Creek, the Skagit River, and an unnamed pond at an instantaneous rate of 0.6 cubic feet per second (CFS) and an annual rate of 90 acre-feet/year (ac-ft/yr) for the irrigation of 60 acres. The PODs are located in the: (1) SE¼ SW¼ NE¼, (2) the former bed of Skagit River southerly of and adjoining Government Lot 1, and (3) former bed of Skagit River southerly of, and adjoining, and /or, Government Lot 2, all Section 16, Township 35 North, Range 6 East. The authorized POU is within Section 16, Township 35 North, Range 6 East.



Ground Water Certificate (GWC) 2677

GWC 2677 was issued to M. G. Hauenstein with a priority date of March 31, 1954. The Certificate authorizes points of withdrawal (POW) within Government Lot 5, Section 22, Township 35 North, Range 6 East, at an instantaneous rate of 650 gallons per minute (gpm) and an annual rate of 220 ac-ft/yr for the irrigation of 110 acres. The authorized POU is within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, and Government Lots 4 and 5 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, Township 35 North, Range 6 East.

GWC 1848

GWC 1848 was issued to C.S. Philips with a priority date of May 6, 1953. The Certificate authorizes a POW within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 35 North, Range 6 East, at an instantaneous rate of 180 gpm, an annual quantity of 100 ac-ft/yr, for the irrigation of 50 acres. The authorized POU is within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 16, Township 35 North, Range 6 East.

Water Right Claim (WRC) 096365

WRC 096365 was submitted by Mrs. Ruth Lipsey. The claim lists the date of first use as July 1972. The listed instantaneous quantity is 150 gpm, the annual quantity is 60 ac-ft/yr, for the irrigation of 30 acres. The POW and POU are located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 35 North, Range 6 East.

Ownership and Land Use History

USGE owns over 700 mostly agricultural acres on Cockreham Island, Skagit County, and has approximately 575 acres planted with blueberries. The above-listed water rights documents are appurtenant to land now owned by USGE. USGE purchased these properties between 2009 and 2012. Based on aerial photography from 1937, 1941/42, 1956, 1969, 1998, 2001, 2004-7, 2009, 2011, and 2013, it looks like the POUs for each of the three certificates have been cleared, planted, and very likely irrigated since the date each certificate was issued.

Farm managers, Marcia and Tony Zankich, indicate that the following crops have been historically planted within the places of use: blueberries, raspberries, potatoes, corn, wheat, grass/turf, and saplings. Crops planted on the POU for WRC 096365 are similar. As recently as summer 2011, potato crops were planted throughout the certificated and claimed POUs and irrigated with moving big-gun sprinklers.

WRC 096365 was submitted to Ecology in May 1974 and the listed date of first use is July 1972. During the claims registry, many landowners misunderstood the process and listed the "date of first use" as the date the *landowner* first put water to beneficial use rather than the date a prior owner put water to beneficial use. It seems likely that this is the case with this claim. A search of Skagit County's aerial photography databases shows that since at least 1937, approximately 30 acres within the original POU were cleared and planted. Aerial photography from 1941/42 (U.S. Army Corps; scale: 1:20,000) corroborates this. Thus, it is likely that water use on the POU began before 1945.

A water right claim is a *claim* to a water right for a beneficial use which predates the state water code (1917 for surface water and 1945 for groundwater) and is not authorized by a state-issued permit or certificate. Water right claims can only be confirmed through

adjudication by the Washington State Superior Court. The Department of Ecology cannot verify a claim's validity. However, Ecology may tentatively determine the extent and validity of a claimed water right pursuant to RCW 90.14 (see Ecology Policy 1120). Based on aerial photography data and oral land use history, I tentatively find this claim to be valid.

To calculate the perfected annual quantity applied on the four places of use, I will focus on the 5-year near-term irrigation history. Within the past five years, blueberries and potatoes have been planted. Using the *Washington Irrigation Guide (WIG)* to calculate the total irrigation requirements, the water duty for potatoes irrigated by moving big-gun sprinklers is greater than the current drip-irrigation method used for irrigating blueberries. Thus, the water duty for potatoes is used to calculate the annual quantity available for seasonal change. Based on these calculations, 232.25 ac-ft/yr is available for change (see Table 1).

Table 1. Calculation of Total Irrigation Requirements for Potatoes (Based on the WIG)

<i>Crop and System Type</i>	<i>Total Irrigation Requirement (TIR)</i>
Crop : Potatoes Irrigation System: Sprinkler: Moving Big Gun Area: 250 acres CIR¹: 0.604 ac-ft/ac Irrigation Efficiency: 65%	$.604 \text{ ac-ft/ac}$ $\div 65\%$ $= 0.929 \text{ ac-ft/ac} * 250 \text{ acres}$ $* * *$ TIR for all acres: 232.25 ac-ft/yr

¹CIR – Crop Irrigation Requirement

Proposed Project

USGE proposes to irrigate 250 acres of blueberries in five fields within the contiguous USGE property, including Fields 5, 6, 7, 13 and most of Field 12 (see attached map). While there is some overlap with the original places of use listed on the certificates, most of the acreage is within a new POU.

Blueberries will be the only crop planted on the proposed POU and the plants will be irrigated through a sophisticated, pressure-activated drip irrigation system. This irrigation system, called Eurotape, releases approximately a quart of water directly to the roots of a 100-foot row of blueberries, with 2-foot spacing, over the course of 1 hour. Using this irrigation system, the applicant estimates a crop irrigation requirement of approximately 2.15 inches per year or 0.18 ac-ft/yr (see Table 2). This is less than the amount available to be changed.

Table 2. Calculation of Total Irrigation Requirements for Blueberries (Based on U.S. Golden Eagle Estimates)

<i>Crop and System Type</i>	<i>Total Irrigation Requirement (TIR)</i>
Crop : Blueberries Irrigation System: Micro-Irrigation: Trickle/Drip Area: 250 acres CIR: 0.18 ac-ft/ac Irrigation Efficiency: 95%	$0.18 \text{ ac-ft/ac} \div 95\%$ $= 0.19 \text{ ac-ft/ac} * 250 \text{ acres}$ $* * *$ TIR for all acres: 47.5 ac-ft/yr

Conclusions

Based on conversations with the farm managers Marcia and Tony, aerial photography, and crop types grown, I tentatively conclude that WRC 096365 is valid and none of the certificates have been wholly relinquished. Through this investigation, it appears that as much as 1,249 gpm and 232.25 ac-ft/yr has been applied over the 250-acre POU covered by the existing water rights and water right claim for the period of time the three water rights have been certificated and the claimed quantity has been in use.

Under the subject seasonal change applications, you are requesting to change the points of diversion/withdrawal and change places of use to cover 250 acres that are different from the original places of use listed on the certificates and claim. The requested changes are as follows:

- An instantaneous quantity not to exceed 1,249 gpm
- An annual volume not to exceed 232.25 acre-feet
- Irrigation of 250 acres of blueberries
- Points of withdrawal located in:
 - SW¼ of Section 16, Township 36 North, Range 3 East
 - SE¼ of Section 16, Township 36 North, Range 3 East
 - NE¼ of Section 16, Township 36 North, Range 3 East
- A place of use within the SW¼ of Section 15, S½ and SE¼ NE¼ of Section 16, and the N ½ of Section 21, Township 36 North, Range 6 East, and includes the following Skagit County parcels: P41308, P41306, P41307, P41313, P41314, P41312, P41245, P41250, P41269, P41267, P41268, P41270, P41254, P41262, P41255, P41746, P41745, P41744, P41743, P41750, P41782, P41800, P65627, P65626, P65625, and P65622, P65623.

On July 29, 2015, Ria Berns (Environmental Specialist) and Buck Smith (Senior Hydrogeologist) of my staff met with you and conducted a site visit. During the site visit, my staff visited the proposed three points of withdrawal (field 6, 10, and 13 wells) and viewed the 250 acres of blueberries within the proposed POU.

- Field #6 well will provide irrigation water to blueberry crops in fields 5, 6, and 7.
- Field #10 well will provide irrigation for blueberries planted in field 12.
- Field #13 well will supply irrigation water for blueberries planted in field 13.

At the time of the site visit, the irrigation systems were fully installed, the points of withdrawal were all operable, and the fields were fully planted with blueberries. No irrigation was occurring at the time of the visit.

The requested points of withdrawal are within the alluvial aquifer and thus, the same source water as the certificated and claimed points of diversion and withdrawal. There will be no impairment of existing water users. The subject certificates predate WAC 173-503, so minimum instream flows will not be impaired.

DEPARTMENT OF ECOLOGY DECISION - INCLUDING TERMS & CONDITIONS

Your request for a seasonal change in the place of use and points of withdrawal for the 2015 irrigation season is hereby **APPROVED** under the terms and conditions listed below:

- This seasonal change does not authorize an enlargement of water use or total irrigated acres.
- The certificated/claimed instantaneous rates cannot be exceeded at any time. The total rate of pumping from all seasonally changed points of withdrawal shall not exceed 1,249 gpm).
- An approved measuring device shall be installed and maintained on the authorized points of withdrawal in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173. In order to ensure compliance with the terms of this authorization, water use data shall be recorded weekly and shall be promptly submitted to Ecology upon request.
- WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document titled "Water Measurement Device Installation and Operation Requirements". See <http://www.ecy.wa.gov/programs/wr/measuring/measuringhome.html>
- This seasonal change is subject to existing rights, including any rights held by the United States for the benefit of tribes under treaty or settlement. By ensuring no enlargement of the

rate of water use or the number of irrigated acres, this seasonal change authorization should have no greater impact on tribal rights than the original authorization.

- If it can be shown that water use authorized by this seasonal change is causing impairment of existing rights or is being used illegally, then this authorization will be immediately canceled.
- This seasonal change does not convey a right of access to, or other right to use land, which you do not legally possess. Obtainment of such a right is a private matter between you and the owner of the land.
- Violation of any of the terms and conditions of this seasonal change will result in this authorization being immediately canceled, issuance of administrative orders to cease and desist, and may also subject the violator to civil penalties.
- Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, point of diversion, measuring device, and associated distribution systems for compliance with water law.
- **This seasonal change shall be in effect through the 2015 irrigation season** (unless canceled sooner); at which time the subject rights will revert back to their original attributes.

THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR IMPLY THAT A FINAL (REGULAR) CHANGE AUTHORIZATION WILL ISSUE FOR FUTURE USE OF THE WATER HEREIN AUTHORIZED.

If you have any questions or concerns regarding this authorization, please contact Ria Berns at ria.berns@ecy.wa.gov or (425) 649-7217.

OPPORTUNITY TO APPEAL

You have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do the following within 30 days of the date of receipt of this document:

- File your appeal and a copy of this document with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

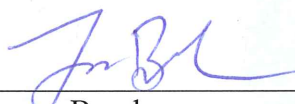
You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk P.O. Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board Environmental Hearings Office 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board P.O. Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office
Website: <http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Signed at Bellevue, Washington, this 25th day of August, 2015.

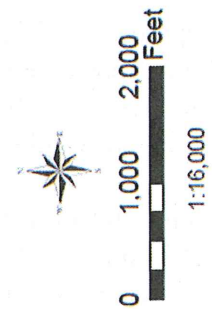
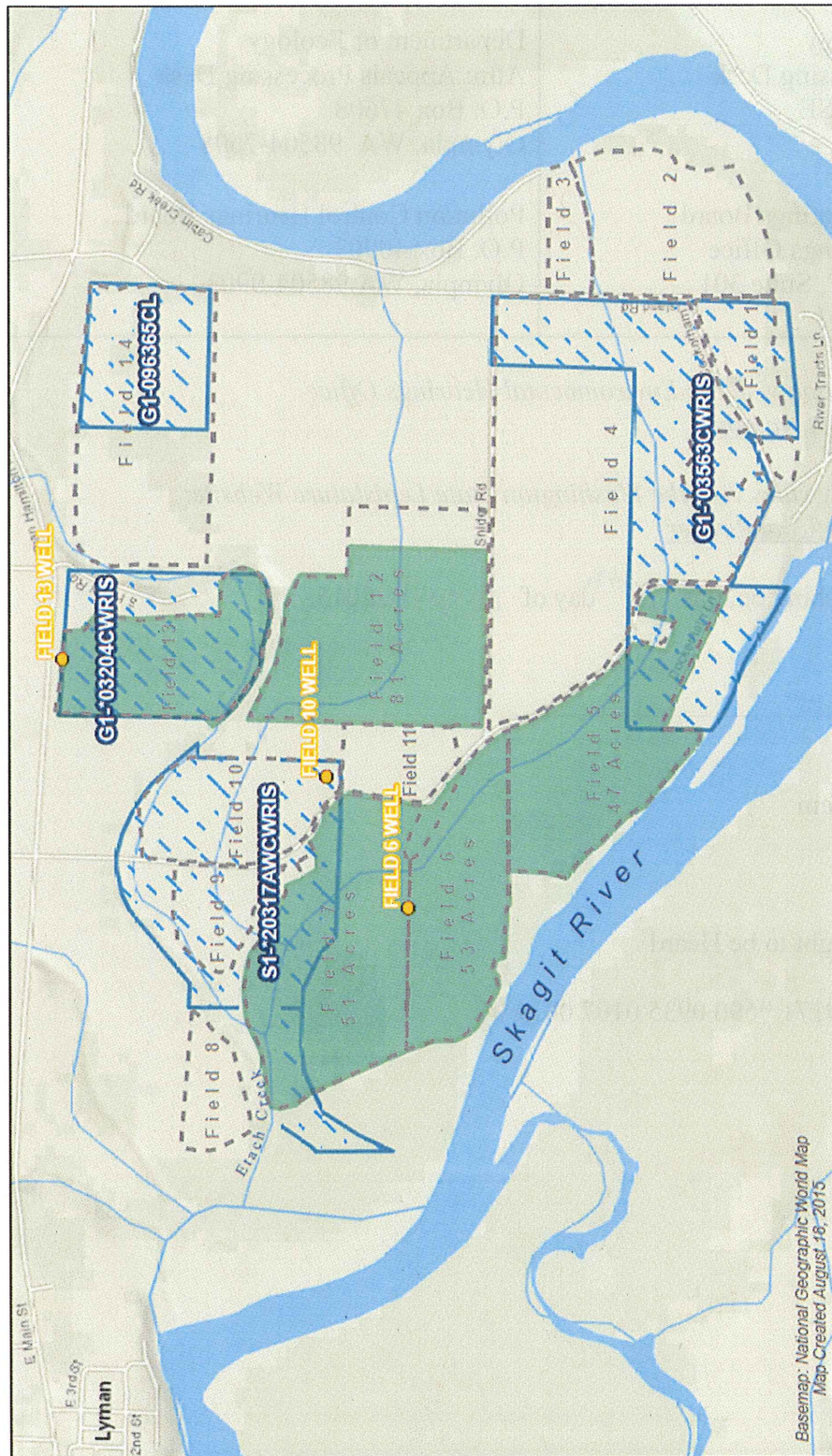


Thomas Buroker
Section Manager
Water Resources Program

tb:rb:mc

Enclosure: Your Right to be Heard

By Certified Mail: 9171 9690 0935 0107 0034 06



- Well Location
- Blueberry Fields
- Water Right Document Places of Use
- Areas to be Irrigated Under Seasonal Changes